REMARKS

Claim 9 is pending in the instant application. Claim 9 has been rejected. Reconsideration is respectfully requested in light of the following remarks.

The Examiner states the application is not in condition for allowance since Caplan et al. antedates the Applicants' priority date. The Examiner further states the claim for priority for the provisional application is not in the specification nor in the application data sheet and thus does not receive priority.

In an earnest effort to facilitate prosecution, we have amended the specification to explicitly recite the priority claim. However, it is respectfully pointed out that it has always been clear with the U.S. Patent and Trademark Office that two provisional applications were claimed as priority as evidenced by the priority data stated on the cover sheet of the PCT application filed on March 28, 2002 (copy provided herewith) and the executed Declaration and Power of Attorney for Patent Application filed on January 14, 2003 (copy provided herewith) which claims the benefit of U.S. Provisional Application No. 60/158,000 filed October 6, 1999 and U.S. Provisional Application No. 60/194,274 filed April 3, 2000. Therefore, Caplan et al. is not a valid prior art reference.

Conclusion

Applicants believe that the foregoing comprises a full and complete response to the Office Action of record. Accordingly, favorable reconsideration and subsequent allowance of the pending claim is earnestly solicited.

Respectfully submitted,

Jane Massey Licata
Registration No. 32,257

Date: **January 20, 2009**

Licata & Tyrrell P.C.
66 E. Main Street
Marlton, New Jersey 08053

(856) 810-1515

(12) INTERNATIONAL APPLICATION PUBLISHED UNDER THE PATENT COOPERATION TREATY (PCT)

(19) World Intellectual Property Organization
International Bureau

(43) International Publication Date
12 April 2001 (12.04.2001)

PCT

(10) International Publication Number
WO 01/25400 A2

(51) International Patent Classification[7]: C12N

(21) International Application Number: PCT/US00/27443

(22) International Filing Date: 4 October 2000 (04.10.2000)

(25) Filing Language: English

(26) Publication Language: English

(30) Priority Data:

60/158,000	6 October 1999 (06.10.1999)	US
60/194,274	3 April 2000 (03.04.2000)	US

(63) Related by continuation (CON) or continuation-in-part (CIP) to earlier applications:

US	60/158,000 (CIP)
Filed on	6 October 1999 (06.10.1999)
US	60/194,274 (CIP)
Filed on	3 April 2000 (03.04.2000)

(71) Applicant *(for all designated States except US)*: **TRUSTEES OF DARTMOUTH COLLEGE** [US/US]; Technology Transfer Office, 11 Rope Ferry Road, Hanover, NH 03755-1404 (US).

(72) Inventors; and

(75) Inventors/Applicants *(for US only)*: **HAMILTON, Joshua, W.** [US/US]; 38 Laramie Road, Etna, NH 03750 (US). **STANTON, Bruce, A.** [US/US]; 26 Low Road, Hanover, NH 03755 (US).

(74) Agents: **LICATA, Jane, Massey** et al.; Law Offices of Jane Massey Licata, 66 E. Main Street, Marlton, NJ 08053 (US).

(81) Designated States *(national)*: CA, JP, US.

(84) Designated States *(regional)*: European patent (AT, BE, CH, CY, DE, DK, ES, FI, FR, GB, GR, IE, IT, LU, MC, NL, PT, SE).

Published:

— *Without international search report and to be republished upon receipt of that report.*

For two-letter codes and other abbreviations, refer to the "Guidance Notes on Codes and Abbreviations" appearing at the beginning of each regular issue of the PCT Gazette.

WO 01/25400 A2

(54) Title: COMPOSITIONS AND METHODS FOR MODULATING ATP-BINDING CASSETTE TRANSMEMBRANE REPORTER PROTEIN EXPRESSION

(57) Abstract: Methods and compositions for modulating cell surface protein expression are provided. The compositions of the present invention are gene constructs comprising ATP-binding cassette transmembrane reporter proteins.

TRANSMITTAL LETTER (General - Patent Pending)	Docket No. DC-0190

In Re Application Of: **Hamilton and Stanton**

Serial No.	Filing Date	Examiner	Group Art Unit
10/089,475	August 12, 2002	Not Yet Assigned	1645

Title: **Compositions and Methods for Modulating TP-Binding Cassette Transmembrane Reporter Protein Expression**

TO THE ASSISTANT COMMISSIONER FOR PATENTS:

Transmitted herewith is:

Corrected executed Declaration and Power of Attorney

in the above identified application.

- ☑ No additional fee is required.
- ☐ A check in the amount of is attached.
- ☒ The Assistant Commissioner is hereby authorized to charge and credit Deposit Account No. **50-1619** as described below. A duplicate copy of this sheet is enclosed.
 - ☐ Charge the amount of
 - ☒ Credit any overpayment.
 - ☒ Charge any additional fee required.

Jane Massey Licata
Signature

Dated: **January 14, 2003**

Jane Massey Licata, Reg. No. 32,257
Kathleen A. Tyrrell, Reg. No. 38,350
Licata & Tyrrell P.C.
66 E. Main Street
Marlton, New Jersey 08053
Telephone: (856) 810-1515
Facsimile : (856) 810-1454

I, Jane Massey Licata, Registration No. 32,257, certify that this correspondence is being deposited with the U.S. Postal Service as First Class mail in an envelope addressed to the U.S. Patent and Trademark Office, P.O. Box 2327, Arlington, VA 22202.
On this date: January 14, 2003

Jane Massey Licata
Jane Massey Licata, Registration No. 32,257

cc:

Copyright 1995 Legalsoft

Docket No.
DC-0190

Declaration and Power of Attorney For Patent Application

English Language Declaration

As a below named inventor, I hereby declare that:

My residence, post office address and citizenship are as stated below next to my name,

I believe I am the original, first and sole inventor (if only one name is listed below) or an original, first and joint inventor (if plural names are listed below) of the subject matter which is claimed and for which a patent is sought on the invention entitled

Compositions and Methods for Modulating TP-Binding Cassette Transmembrane Reporter Protein Expression

the specification of which

(check one)

☐ is attached hereto.

☒ was filed on **October 4, 2000** as United States Application No. or PCT International Application Number **PCT/US00/27443**

and was amended on _____

(if applicable)

I hereby state that I have reviewed and understand the contents of the above identified specification, including the claims, as amended by any amendment referred to above.

I acknowledge the duty to disclose to the United States Patent and Trademark Office all information known to me to be material to patentability as defined in Title 37, Code of Federal Regulations, Section 1.56.

I hereby claim foreign priority benefits under Title 35, United States Code, Section 119(a)-(d) or Section 365(b) of any foreign application(s) for patent or inventor's certificate, or Section 365(a) of any PCT International application which designated at least one country other than the United States, listed below and have also identified below, by checking the box, any foreign application for patent or inventor's certificate or PCT International application having a filing date before that of the application on which priority is claimed.

Prior Foreign Application(s)			Priority Not Claimed
(Number)	(Country)	(Day/Month/Year Filed)	☐
(Number)	(Country)	(Day/Month/Year Filed)	☐
(Number)	(Country)	(Day/Month/Year Filed)	☐

I hereby claim the benefit under 35 U.S.C. Section 119(e) of any United States provisional application(s) listed below:

60/158,000	October 6, 1999
(Application Serial No.)	(Filing Date)
60/194,274	April 3, 2000
(Application Serial No.)	(Filing Date)
(Application Serial No.)	(Filing Date)

I hereby claim the benefit under 35 U. S. C. Section 120 of any United States application(s), or Section 365(c) of any PCT International application designating the United States, listed below and, insofar as the subject matter of each of the claims of this application is not disclosed in the prior United States or PCT International application in the manner provided by the first paragraph of 35 U.S.C. Section 112, I acknowledge the duty to disclose to the United States Patent and Trademark Office all information known to me to be material to patentability as defined in Title 37, C. F. R., Section 1.56 which became available between the filing date of the prior application and the national or PCT International filing date of this application:

(Application Serial No.)	(Filing Date)	(Status) (patented, pending, abandoned)
(Application Serial No.)	(Filing Date)	(Status) (patented, pending, abandoned)
(Application Serial No.)	(Filing Date)	(Status) (patented, pending, abandoned)

I hereby declare that all statements made herein of my own knowledge are true and that all statements made on information and belief are believed to be true; and further that these statements were made with the knowledge that willful false statements and the like so made are punishable by fine or imprisonment, or both, under Section 1001 of Title 18 of the United States Code and that such willful false statements may jeopardize the validity of the application or any patent issued thereon.

POWER OF ATTORNEY: As a named inventor, I hereby appoint the following attorney(s) and/or agent(s) to prosecute this application and transact all business in the Patent and Trademark Office connected therewith. *(list name and registration number)*

Jane Massey Licata, Reg. No. 32,257
Kathleen A. Tyrrell, Reg. No. 38,350
Laura M. Plunkett, Reg. No. 45,015
Bridget C. Sciamanna, Reg. No. 47,333

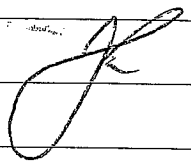
of the firm

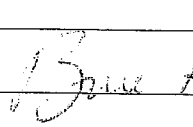
Licata & Tyrrell P.C.
66 E. Main Street
Marlton, New Jersey 08053

26259
PATENT TRADEMARK OFFICE

Send Correspondence to:

Direct Telephone Calls to: *(name and telephone number)*
Jane Massey Licata or Kathleen A. Tyrrell - (856) 810-1515

Full name of sole or first inventor **Joshua W. Hamilton**
Sole or first inventor's signature  Date 11/18/02
Residence **Etna, New Hampshire**
Citizenship **US**
Post Office Address **38 Laramie Road**
Etna, New Hampshire 03750

Full name of second inventor, if any **Bruce A. Stanton**
Second inventor's signature  Date 12/02/02
Residence **Hanover, New Hampshire**
Citizenship **US**
Post Office Address **26 Low Road**
Hanover, New Hampshire 03755